

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
ORAL W. ROBERTS,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 708

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$250.00 civil penalty for an alleged open burning violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 5th day of December, 1974, at Seattle, Washington; and appellant, Oral W. Roberts, appearing pro se and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney, Keith D. McGoffin; and Board members present at the hearing being Walt Woodward (presiding) and Chris Smith; and the Board having considered the sworn testimony, exhibits,

1 records and files herein and having entered on the 9th day of
2 December, 1974, its proposed Findings of Fact, Conclusions of Law
3 and Order; and the Board having served said proposed Findings,
4 Conclusions and Order upon all parties herein by certified mail,
5 return receipt requested and twenty days having elapsed from
6 said service; and

7 The Board having received no exceptions to said proposed
8 Findings, Conclusions and Order; and the Board being fully advised
9 in the premises, now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
11 Findings of Fact, Conclusions of Law and Order, dated the 9th
12 day of December, 1974, and incorporated by this reference herein
13 and attached hereto as Exhibit A, are adopted and hereby
14 entered as the Board's Final Findings of Fact, Conclusions of
15 Law and Order herein.

16 DATED this 27th day of January, 1975.

17 POLLUTION CONTROL HEARINGS BOARD

18 Chris Smith
19 CHRIS SMITH, Chairman

20 Walt Woodward
21 WALT WOODWARD, Member
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

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This matter, the appeal of a \$250.00 civil penalty for an alleged open burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Chris Smith) at a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on December 5, 1974.

Appellant appeared pro se. Respondent appeared through its counsel, Keith D. McGoffin. Eugene Barker, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 From testimony heard and exhibits examined, the Pollution Control
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 Respondent, pursuant to Section 5, chapter 69, Laws of 1974,
6 3rd Ex. Sess., has filed with this Board a certified copy of its
7 Regulation I containing respondent's regulations and amendments thereto.

8 II.

9 Section 9.02 of Regulation I makes it unlawful to cause or allow
10 an outdoor fire for the purpose of demolition or which contains
11 petroleum products normally emitting dense smoke.

12 III.

13 Appellant owns property at 4916-80th N.E., Marysville, Snohomish
14 County. On this property were several old residential and outbuilding
15 structures which had been unoccupied for nine years. On August 22, 1974,
16 appellant was ordered by Snohomish County either to repair or demolish
17 the structures.

18 IV.

19 Shortly thereafter, appellant made an oral contract with Frank V.
20 Kissinger, Marysville, to demolish and remove the structures. In this
21 oral arrangement, appellant did not authorize or consent to the
22 demolition by burning. The contract called for Kissinger to remove
23 demolished material.

24 V.

25 On September 9, 1974, on appellant's property at 4916-80th N.E.,
26 Marysville, Snohomish County, three large separate fires containing

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 asphalt shingles and other demolition materials were ignited and
2 burned by Kissinger, assisted by Charles Paxton, Marysville. Appellant,
3 a resident of Bremerton, Kitsap County, was not present and did not
4 know of the fires.

5 VI.

6 The fires were observed by an inspector on respondent's staff.
7 He served Notice of Violation No. 9806, citing Section 9.02, on
8 Kissinger and Paxton and on appellant, as owner of the property.
9 Subsequently, and in connection therewith, respondent served Notice of
10 Civil Penalty No. 1740 in the sum of \$250.00 on Kissinger, Paxton and
11 appellant. The penalty is the subject of this appeal which is brought
12 by appellant for himself only.

3 VII.

14 Any Conclusion of Law hereinafter recited which should be
15 deemed a Finding of Fact is hereby adopted as such.

16 From these findings, the Pollution Control Hearings Board comes
17 to these

18 CONCLUSIONS OF LAW

19 I.

20 There was a violation of Section 9.02 of respondent's Regulation
21 I at appellant's property in Marysville on September 9, 1974.

22 II.

23 It would be possible to find appellant, as owner of the property,
24 in technical violation of Section 9.02 of respondent's Regulation I.
25 But the preponderance of the evidence is that appellant did not know
26 of the fires, did not consent to them and did not authorize them.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Therefore, he should be removed from responsibility in connection
2 with Notice of Violation No. 9806 and Notice of Civil Penalty No. 1740.

3 III.

4 Any Finding of Fact, which should be deemed a Conclusion of Law
5 is hereby adopted as such.

6 Therefore, the Pollution Control Hearings Board issues this

7 ORDER

8 The appeal is sustained and respondent is directed to strike
9 appellant from Notice of Violation No. 9806 and Notice of Civil Penalty
10 No. 1740.

11 DONE at Lacey, Washington, this 7th day of February, 1974.

12 POLLUTION CONTROL HEARINGS BOARD

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14 Walt Woodward
15 WALT WOODWARD, Chairman

16 Chris Smith
17 CHRIS SMITH, Member

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26 FINDINGS OF FACT,
CONCLUSIONS OF LAW
27 AND ORDER